

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-6202

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-6202

-----x
USHER B. WEINRAUCH,

Plaintiff-Appellant,

-against-

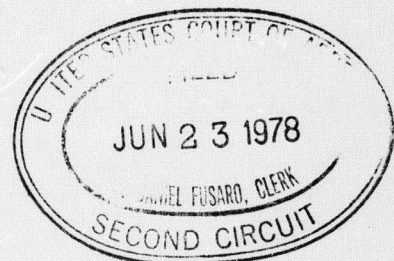
UNITED STATES SECRET SERVICE,
LILBURN E. BOGGS, Deputy Director,
United States Secret Service, and
HON. MICHAEL BLUMENTHAL,
United States Treasurer,

Defendants-Appellees.
-----x

Appeal from Order of the United States
District Court for the Eastern District
of New York

APPELLANT'S BRIEF AND APPENDIX

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APPELLANT'S BRIEF

PRELIMINARY STATEMENT

This is an appeal from an order of the United States District Court for the Eastern District of New York (Honorable Jack B. Weinstein, D.J.), dated November 1, 1977, dismissing appellant's pro se Complaint under the Freedom of Information Act. A copy of the order of the District Court is Appendix D.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

(1) In a District Court proceeding under the Freedom of Information Act to compel an agency to produce records it refused to produce in response to the plaintiff's request, may the agency assert as a defense a statutory exemption which it did not cite in its initial response to the request?

(2) Are mere investigations by a law enforcement authority, absent any intent to commence a criminal proceeding, "enforcement proceedings" for the purposes of 5 U.S.C. § 552(b)(7)(A)?

(3) If portions of some documents in an agency file are exempt from disclosure, is the entire file exempt from disclosure?

STATEMENT OF THE CASE

For two years, the United States Secret Service ("Secret Service") conducted "in-depth investigations" of plaintiff, Mr. Usher B. Weinrauch -- including interrogatories of him and his employers, and exchanges of information concerning him with foreign intelligence agencies -- without ever bringing (or even suggesting) any criminal charges against him. (See Affidavit of defendant Boggs

(Appendix B), hereinafter cited as "Boggs Aff.". On March 30, 1977, plaintiff wrote to the Secret Service requesting, under the Freedom of Information Act, a "copy of all the files indexed or maintained under [his] name". By letter dated April 6, 1977, Mr. Robert O. Goff, Freedom of Information and Privacy Acts Officer of the Secret Service, advised plaintiff that his file was "exempted" from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A) "since disclosure would interfere with an ongoing proceeding". Mr. Goff added that the citation of this exemption "is not to be construed as the only exemption which may be applied under the Freedom of Information Act." (Boggs Aff., Attachment 2.)

On May 9, 1977, plaintiff appealed Mr. Goff's decision, in writing, to defendant Lilburn E. Boggs, Deputy Director of the Secret Service. By letter dated June 15, 1977, Mr. Boggs denied plaintiff's appeal on a variety grounds:

(1) Disclosure of the requested files "would interfere with an ongoing enforcement proceeding constitute (sic) an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(A).

(2) "[D]isclosure would constitute an unwarranted invasion of personal privacy, would disclose the identity of a confidential source and/or information furnished by a confidential source, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel, or a combination of the above." 5 U.S.C. §§ (b)(7)(C), (D), (E) and (F).

(3) Some records in the file were purportedly "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Secret Service." 5 U.S.C. § 552(b)(5).

(4) Some of the records purportedly related "solely to internal proceedings." 5 U.S.C. § 552(b)(2).

(5) Some of the material was purportedly "currently and properly classified in the interest of national defense and foreign policy." 5 U.S.C. § 552(b)(1).

Despite the fact that Mr. Boggs had expanded Mr. Goff's list of claimed exemptions eight-fold, Mr. Boggs closed his letter by asserting that, "The citation of these exemptions is not to be construed as including the only exemptions which may be applicable to these documents under the Freedom of Information Act." (Boggs Aff., Attachment 4, p.2.)

On July 19, 1977, plaintiff commenced this action, pro se, in the United States District Court for the Eastern District of New York, asking the Court to direct the Secret Service to produce the withheld documents. On October 4, 1977, the defendants moved for summary judgment, asserting that all the requested records are exempt from disclosure under 5 U.S.C. § 552(b)(7)(A), and that certain unspecified portions are exempt under 5 U.S.C. §§ 552(b)(1), (2), (5), (7)(C), (7)(D), (7)(E) and (7)(F). On October 21st Judge Weinstein conducted a hearing on the defendants' motion. At the beginning of the hearing, the Court asked the defendants

to produce their file for in camera examination, and certain unspecified documents were given to him.* After a luncheon recess, Judge Weinstein granted the defendants' motion, holding that:

"This file is exempt from disclosure, because it contains investigatory records compiled for law enforcement purposes. The production of the report would interfere with possible law enforcement proceedings in the future.

"Revealing the record would also possibly (sic) disclose investigative techniques and procedures; the production would also disclose the identity of possible confidential sources, and of confidential information.

"These records should be kept sealed because they may affect the foreign policy and foreign relations of the country. They were properly compiled by the Secret Service, in its obligation to protect representatives of foreign countries present in this country and visiting officials from foreign countries in the past and possibly in the future." (App. C, p. 9.)

On October 25, 1977, plaintiff filed a Notice of Appeal and on May 5, 1978, counsel was assigned to represent plaintiff before this Court.

* There is some question as to whether the records reviewed by Judge Weinstein were, in fact, all the files kept by the defendants concerning plaintiff. While the Assistant United States Attorney assured the District Court that he gave to the Court the entire file he had, there is no statement on the record by the Secret Service that they had turned over their entire files concerning plaintiff to the Assistant United States Attorney. This Court should require such a statement by the defendants.

ARGUMENT

- I. The only exemption from disclosure which should have been considered by the District Court is 5 U.S.C. § 552(b)(7)(A) because that was the only exemption cited by the Secret Service in its initial response to plaintiff's request.
-

5 U.S.C. § 552(a)(6)(A)(i) provides that

"Each agency, upon any request for records . . . shall determine within ten days . . . whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor"

The purposes of this provision are twofold: (1) to preclude the possibility of an agency's simply sitting on a request, and (2) to compel an agency to state the basis of a refusal to produce request records so that the requesting party may assess his situation and consider his options.

In the case at bar, the Secret Service satisfied the first purpose: Mr. Goff responded to plaintiff's request within the time allowed. However, it appears that the Secret Service deliberately set out to frustrate the second purpose: Mr. Goff cited only one exemption -- § 552(b)(7)(A) -- but went on to attempt to keep open every other possible exemption claim! Indeed, in the District Court, the defendants cited seven exemptions which had not been cited by Mr. Goff (§§ 552(b)(1), (2), (5) (7)(C),

(7)(D), (7)(E) and (7)(F)), and the Court relied, in part, on two of these (§§ 552(b)(7)(D) and (E)).

The defendants' behavior, sanctioned by the court below, flies in the face of the statute's language and, if allowed to succeed, would frustrate one of the essential purposes of § 552(a)(6). This Court should, therefore, peremptorily reverse the District Court's ruling with respect to §§ 552(b)(7)(D) and (E), and limit its consideration to the question of whether the requested files are exempted from disclosure by virtue of § 552(b)(7)(A).

II. Section 552(b)(7)(A) is inapplicable to the requested file because there are no "enforcement proceedings" with which disclosure would interfere.

The purpose and thrust of the Freedom of Information Act is to provide for disclosure of government files unless an exemption is clearly established. Title Guarantee Company v. N.L.R.B., 534 F.2d 484 (2d Cir.), cert. denied, 429 U.S. 834 (1976). The burden is on the agency claiming exemption to show that the records sought "specifically fall within the protection of one or more of the . . . exemptions", and the exemptions "are to be construed narrowly." Theriault v. United States, 503 F.2d 390, 392 (9th Cir. 1974). See also Department of the Air Force v. Rose, 425 U.S. 352, 360-361 (1976).

In the present case the only exemption which the Secret Service claimed initially -- and the only exemption it ever advanced as covering all of its file concerning plaintiff -- is § 552(b)(7)(A), which exempts from disclosure

"investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would interfere with enforcement proceedings."

The court below held that production of the Secret Service's file was not required because "production of the report would interfere with possible law enforcement proceedings in the future", apparently a reference to § 552(b)(7)(A). This holding is plain error.

First, the statute does not speak of "possible law enforcement proceedings". During the Congressional debate on the 1974 amendments to the FOIA, which included the present § 552(b)(7)(A), Senator Hart, the sponsor of this section, explained that it

"would apply whenever the Government's case in court -- a concrete prospective law enforcement proceeding -- would be harmed by the premature release of evidence or information not in the possession of known or potential defendants."
120 Cong. Rec. 17033 (May 30, 1974).

Thus, speculation about possible future enforcement proceedings is irrelevant to § 552(b)(7)(A).

Moreover, there is no evidence in the record to support a finding that there are any enforcement proceedings -- real or "possible" -- with which production of the

requested records would interfere. Paragraph 4 of Mr. Boggs' affidavit -- the only evidence offered by the defendants in support of their § 552(b)(7)(A) claim -- does not claim or even suggest that any enforcement proceedings are involved. Rather, it alleges only that "investigations" would be hampered by disclosure of the files, but the statute does not protect investigations unrelated to enforcement proceedings. There being no enforcement proceedings in progress, or even contemplated, § 552(b)(7)(A) simply is not applicable to the Secret Service's file concerning Mr. Weinrauch, and the decision of the District Court should be reversed.

III. The other exemptions relied upon by the District Court would not justify non-disclosure of the entire file even if the defendants' assertion of those exemptions had been timely.

As explained in Section I, supra, the District Court should properly have considered only § 552(b)(7)(A) because that was the only exemption cited in the Secret Service's initial response to plaintiff's request. Nonetheless, the District Court also relied upon §§ 552(b)(7)(D) and (E). However, neither of those exemptions, even if timely asserted, would exempt all the requested documents.

5 U.S.C. § 552(b)(7)(D)

The District Court held that "the production [of the file] would also disclose the identity of possible

confidential sources, and of confidential information", apparently a reference to 5 U.S.C. § 552(b)(7)(D).

However, Mr. Boggs only claimed that some information in the file reflected confidential sources or information. (Boggs Aff., ¶ 6.) Rather than blanketing the entire file with this exemption, the District Court, at most, should have permitted the defendants to redact the file by deleting the information exempted by this section before producing the file. Department of the Air Force v. Rose, supra., 425 U.S. at 373-376, 381-382; Wellford v. Hardin, 315 F. Supp. 768, 770 (D.D.C. 1970).

5 U.S.C. § 552(b)(7)(E)

The District Court further held that "[r]evealing the record would also possibly (sic) disclose investigative techniques and procedures", apparently a reference to 5 U.S.C. § 552(b)(7)(E). However, this, too, is far beyond what the Secret Service claimed. Defendant Boggs, in paragraph 5 of his affidavit, asserted only that "certain information in the file" was subject to exemption (b)(7)(E). Thus, again, the maximum relief to which the defendants might be entitled would be to be allowed to eliminate the (b)(7)(E)-type information, not to withhold the entire file.*

* The District Court also held that "[t]hese records should be kept sealed because they may affect the foreign policy

(Footnote continued on next page.)

Thus, neither of the two exemptions improperly considered by the District Court would justify total exemption from disclosure for the defendants' file concerning plaintiff.

CONCLUSION

For the reasons stated above, the decision of the District Court should be reversed and the defendants should be directed to produce their file concerning plaintiff for plaintiff's inspection and copying.

Dated: New York, New York
June 23, 1978

Respectfully submitted,

JEFFREY IRA ZUCKERMAN
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(Footnote continued from previous page.)

and foreign relations of the country." However, the Freedom of Information Act nowhere exempts from disclosure materials which "may affect the foreign policy and foreign relations of the country." There being no such exemption, the file must be produced. Kent Corporation v. N.L.R.B., 530 F.2d 612, 617 (5th Cir.), cert. denied, 429 U.S. 920 (1976).

Appendix

OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	FILING DATE DAY	FILING DATE YEAR	J	N/S	EMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
7770	77	1458	07	14	58	2	895	APPEAL	0715	WEINSTEIN		

PLAINTIFFS

WEINRAUCH, USHER B. P.E.

USHER B. WEINRAUCH, P.E.

DEFENDANTS

BOGGS, LILBURN E. (Dep. Dir. of U.S. SECRET SERVICE)

LILBURN E. BOGGS, Deputy Director of United States Secret Service and HON. MICHAEL BLUMENTHAL United States Treasurer

8 USC 1346 , 5 USC 552(a)(4), 28 USC 1361 & First & Fifth Amendments
 FREEDOM OF INFORMATION ACT - Pltff. is a Professional Civil Engineer, harassed by
 ing of people who hate JEWS, hiding behind the identity cards of U.S. Secret
 Service . Pltff. was robbed of his money, properties, Business Plant , &
 materials & legal rts. in Australia because he refused to carry his business
 professional endeavors under a Gentile's name as is imposed in Australia on
 each and every Jewish person with substantial business interests.

ATTORNEYS

for Pltff.:
 Usher B. Weinrauch, P.E. PRO-SE
 01 Empire Blvd. Suite 6J
 klyn., NY 11213
 493-7669)

FOR DEFT:
 U S ATTY
 BY: RALPH McMURRAY
 330-7954

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Appendix A

77C 1458

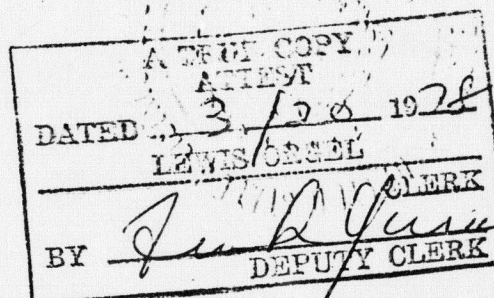
USHER B. WEINRAUCH, P.E. -v- LILBURN E. BOGO

DATE	NR.	PROCEEDINGS
7/15/77		Complaint filed, summons issued. lg.
7-19-77		Summons returned and filed/executed mm
7-20-77		By WEINSTEIN, J. --Order setting pre trial conference for 8-1-77 filed. Copy mailed to plttf. ld (3)
8-1-77		Before WEINSTEIN, J - Case called. Pre-trial conference held and concluded. The govt is to determine within 60 days why the files were not turned over and motion for summary judgment with an affidavit to be made. Case adj'd without date. mm
9/12/77		Answer of deft filed. jj
10/4/77		Notice of motion ret. 10/21/77 for an order granting summary judgment to defendants and against plttf. and deft's MEMORANDUM OF LAW in support of motion for summary judgment, filed. (5 & 6)
10-4-77		Affidavit of James M. Mastrovito filed re: classified documents of plttf's Secret Service file. ld (7)
10/7/77		Letter filed to Judge Weinstein from Ralph L. McMurray dtd 10/6/77, re: enclosure of the Attorney General's memorandum on the 1974 amendments to the Freedom of Information Act. (Memo attached) t k (8)
10/18/77		AFFIDAVIT of Usher B. Weinrauch, Plttf., filed.
10/21/77		Before Weinstein, J.- Case called. Trial ordered and begun, non jury Dept. of Justice files ordered sealed until further order of court placed in the vault. U.B. Weinrauch called and sworn as witness for own behalf. Trial Concluded. Case dismissed w/o costs of disbursement Govt. to submit order 10/25/77. jm
10/27/77		Letter dt 10/23/77 of U.B. Weinrauch to Weinstein, J.-requesting arrest of McMurry, secret service files, etc, filed. jm
10/27/77		By Weinstein, J.- Order directing clerk to treat letter as notice of appeal and notify plttf and deft, dtd 10/25/77, filed. Parties have been notified. jm (see #
10/31/77		Plttf's opposition to order drafted by RALPH L. Mc MURRY, AUSA, filed.
11-1-77		Plttf's opposition
11/2/77		By Weinstein, J.- Order dtd 11/1/77 directing clerk to treat doc #11 notice of appeal, filed. jm (see doc.# 11)
11/2/77		Copies sent to parties and C of A. jm
11/2/77		Letter of D.G. Trager US atty, to Weinstein, J.- enclosing a proposed order and informing as to meeting with Weinrauch on 10/27/77 that Weinrauch left office after short wait and had not discussed order with him, filed. jm
11/2/77		By Weinstein, J.-Order dtd 11/1/77 granting deft's motion for summary judgement, further that complaint be dismissed w/o costs and further that clerk shall seal and keep sealed court's exhibit "1" until further order of a court of competent jurisdiction should an appeal be taken, filed. jm
11-7-77		Plttf's affidavit dtd 11-7-77 filed. mm (1)
11-17-77		By WEINSTEIN, J. Order permitting plttf to proceed without fees.
12/20/77		BY WEINSTEIN, J. ORDER dtd 12/19/77 that plttf. is permitted to prosecute proceeding without prepayment of fees and A TRANSCRIPT of the hearing on 10/21/77 shall be supplied to plttf. and the GVT. shall PAY the COST, filed.
1-30-78		Entire file certified and mailed to C of A. mg
2-2-78		Acknowledgment received from C of A for receipt of record on appeal and ; filed. mm
2-22-78		By WEINSTEIN, J.-Order dtd 2-21-78 directing the Clerk to mail the s

DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. _____
USHER B. WEINRAUCH	LILBURN E. BOGGS	PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS	
2-22-78		records in this case to the Court of Appeals forthwith. mg	(18)
2-22-78		Sealed records mailed to Court of Appeals as per instructions on document #18. mg	---
2-27-78		Acknowledgment rec'd from C of A for receipt of supplemental index. mg	(19)
3-20-78		Sten. transcript dtd. 10-21-78 filed. - fy	(20)
3-20-78		Second supp/ index on appeal filed and sent to C of A. fy	---



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

USHER B. WEINRAUCH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 77 C 1458
	)	
LILBURN BOGGS,	)	
	)	
Defendant.	)	

AFFIDAVIT OF DEPUTY DIRECTOR LILBURN BOGGS

Lilburn Boggs, being duly sworn, hereby deposes and says:

1. I am Deputy Director of the United States Secret Service, having held this Office since March 5, 1972. As Deputy Director, I am responsible for the processing of Freedom of Information Act appeals for the United States Secret Service. I am familiar with the requests of the plaintiff having supervised the processing thereof and have read and am familiar with the allegations contained in plaintiff's complaint.

2. By letter received April 1, 1977, Usher Weinrauch made a Freedom of Information request for a copy of the files indexed or maintained under his name (Attachment 1). By letter dated April 6, 1977, Mr. Robert O. Goff, former Freedom of Information and Privacy Acts Officer for the Secret Service, denied access to Usher Weinrauch's file pursuant to section 552 (b) (7) (A) since disclosure would interfere with an ongoing proceeding (Attachment 2). By letter received May 12, 1977 Usher Weinrauch appealed the decision of Robert O. Goff to deny him information under the Freedom of Information Act (Attachment 3). By letter dated June 15, 1977 I upheld the decision of Robert O. Goff denying Usher Weinrauch information from his file and cited other additional applicable exemptions (Attachment 4).

3. The basic authority for the Secret Service is title

18, United States Code, section 3056. Pursuant to that authority the Secret Service monitors the activities of those who may possibly harm the protectees of the Secret Service. In order to assist in the performance of its functions the Secret Service maintains files on those individuals. The file upon which the response to Usher Weinrauch was made consists of 140 pages.

4. The file pertaining to Usher Weinrauch was withheld pursuant to subsection (b) (7) (A) of title 5, section 552. Usher Weinrauch is of active interest to the United States Secret Service. His file is considered by the Secret Service to be an active case. The direction of interest shown by Mr. Weinrauch toward Secret Service protectees has required that in-depth investigations be conducted by the Secret Service including interviews with Mr. Weinrauch. The investigations of Mr. Weinrauch have been frustrated on occasions by his refusal to talk to the Secret Service and to be interviewed. The Secret Service continues to attempt to determine Usher Weinrauch's location during the visit of certain protectees to the United States. These investigations would be seriously hampered by the disclosure to Mr. Weinrauch of information from the files of the Secret Service pertaining to him. Mr. Weinrauch would not only learn what criteria the Secret Service uses in conducting an investigation, he would be able to avoid in the future certain aspects of investigations pertaining to him if he were to become aware of the various efforts made concerning his investigations. Disclosure of information to those individuals which are being actively investigated would allow that information to be utilized to hamper and avoid further investigations.

5. In addition to exemption (b) (7) (A), I have determined that subsection (b) (7) (E) is also applicable to certain information in the file concerning Usher Weinrauch. In order for it to accomplish its protective mission successfully, the Secret Service is constantly studying methods to update the protective intelligence procedures utilized by the

Service. The Secret Service receives information from Federal, state and local agencies as well as confidential informants in order that it may determine which individuals constitute a threat to or may possibly harm one of the Service's protectees. Information is also received on some occasions from foreign sources. The information received is subjected to close scrutiny in order to determine which information is of such a nature that it would continue to be of interest to the Secret Service. That information is then retained in Secret Service files, such as the file concerning Usher Weinrauch. Some of the information pertaining to Mr. Weinrauch is summarized on a document consisting of an abstract of background information including the information used to evaluate the potential danger of the individual based on criteria established by the Secret Service. Disclosure of the information, whether from the summary document or from the original reports in the Weinrauch file, would reveal to the public the criteria utilized by the Secret Service in determining those individuals of interest to the Secret Service, the evaluation made by the Service of the information, and the status of the investigation concerning the individual which is of interest. Disclosure of the criteria would affect the ability of the Secret Service to obtain similar information in the future and may also allow Mr. Weinrauch or other individuals of interest to the Secret Service to avoid discovery of information concerning them which would fall into the criteria the Secret Service requires in order that an evaluation can be made. The public is not aware of the criteria utilized by the Secret Service and is also not aware of how the documents are maintained or how the information in the file system is retained for use by the Secret Service. Disclosure of this information would reveal those areas which the Secret Service deems of highest importance to it in its attempt to accomplish the mission of protecting its protectees as authorized by law. Therefore, I determined that

subsection (b) (7) (E) should be applied to portions of the file though those portions are also subject to other exemptions.

6. In addition to exemption (b) (7) (A), I have determined that subsection (b) (7) (D) should be applied to confidential sources mentioned in the Weinrauch file and to information provided by those confidential sources. The information withheld consists of confidential sources which provided information to the Secret Service with express assurances of confidentiality or under circumstances from which implied assurances of confidentiality could be inferred. Disclosure of confidential sources would limit the amount of information the Secret Service would receive in the future if it were determined the confidentiality of sources and information could not be maintained. Should this information be made public these confidential sources would hesitate to furnish information to the Secret Service in the future. Consequently, information vital to the Secret Service in the performance of its protective function would be reduced. Revealing the information provided by the confidential sources would lead to disclosure of the informants because the information provided is such that disclosure of the information would allow Mr. Weinrauch to determine the identity of the sources. Disclosure of confidential sources could cause further harassment or intimidation by Mr. Weinrauch. Disclosure of confidential sources could also cause potential confidential informants to refrain from providing information necessary to assist the Secret Service in the performance of its missions.

7. In addition to (b) (7) (A), I have determined that subsection (b) (7) (C) should be applied to portions of the file. Names of individuals not the subject of the file are located in documents in the Weinrauch file. The release of these names would constitute an unwarranted invasion of the personal privacy of these individuals. The release of the

individuals' names could result in embarrassment to the individual or his family which is unwarranted as they are not the main focus of the file or the Secret Service investigation.

8. In addition to (b) (7) (A), I have determined that subsection (b) (7) (F) should be applied to withhold the names of certain agents' involved in the investigation which are stated in the file. It is essential that the identity of Secret Service agents remain somewhat anonymous due to their involvement in protective activities. If an agent's identity becomes known to the public, his usefulness on protective matters becomes limited in scope. He is unable to perform his protective duties in a complete manner necessary for the successful protection of protectees authorized Secret Service protection by statute. To identify by name the Special Agents responsible for the investigation would cause public exposure to those agents which is unwarranted and would inevitably affect their ability to perform their responsibilities. The disclosure of agents' names not only lessens the agents' effectiveness but could also place the agent in a certain amount of danger. As Mr. Weinrauch in the past has attempted to intimidate or harass individuals under the protection of the United States Secret Service, release of Secret Service agents' names could endanger their life or physical safety. As these agents must be free from such harassment or intimidation in order to perform their missions, which may include further investigation of Mr. Weinrauch, their names were withheld.

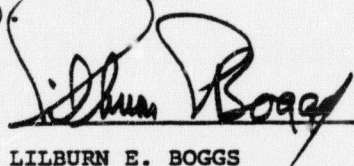
9. In addition to (b) (7) (A), I have determined that subsection (b) (5) should be applied to portions of the file because certain information in the Weinrauch file contains opinions or evaluations that are located in inter-agency memoranda which would not be available by law to a party other than an agency in litigation with the Secret Service. The information subject to this exemption is taken from inter-agency memoranda written by Secret Service agents

giving their opinion, evaluations, and recommendations concerning the status of the investigation and the particular investigative action that should be conducted by the Secret Service. Disclosure of the opinions of agents of the Secret Service is precisely the type of disclosure which would interfere with the agency's ability to conduct investigations concerning its missions. If a Secret Service agent has to concern himself with the possibility of public dissemination of his opinions, the result would surely be a more cautious and, hence, a less effective performance of those duties necessary to the investigative and deliberative process. Allowing these evaluations and opinions to be exempt from disclosure permits agency personnel to freely discuss a particular case without fear that their suggestions, plans or proposed course of action might flow into the public domain. Evaluations in this file made by the Secret Service of Usher Weinrauch concern the potential threat he poses to the Secret Service protectees at the present time or in the future. The information obtained and maintained by the Secret Service concerns the criteria determined to be of importance to the Secret Service. This criteria forms the basis for a Secret Service evaluation of data bearing upon the protection of not only those individual protectees of interest to Mr. Weinrauch but other protectees of the Secret Service, including the President and Vice President of the United States. Disclosure would reveal those areas which the Secret Service considers of vital importance and on which it bases its evaluations as to the seriousness of potential threats.

10. In addition to (b) (7) (A), I have determined that subsection (b) (2) should be applied to certain information in the file. This exemption was applied to the administrative markings that are used for the purpose of storing, locating, retrieving, or transmitting documents pertaining to Plaintiff between Secret Service Headquarters and the field offices.

This information relates solely to Secret Service internal procedures for maintaining or identifying documents in Secret Service file system, in its chain of command, and for coordination between various Secret Service field offices and Headquarters. These administrative markings consist of initials of reviewing officers, clerical personnel identification, and other administrative markings used to identify the dissemination in the Secret Service of the investigative documents. If the administrative markings utilized in maintaining and gaining access to this information are made available to the public along with other administrative information, the result would be a loss of integrity of the system of Secret Service records.

11. In addition to (b) (7) (A), I have determined that (b) (1) is applicable to certain documents in the Secret Service file on Usher Weinrauch. Fifteen documents in the Usher Weinrauch file have been classified under criteria established by Executive Order 11652 to be kept confidential in the interest of national defense or foreign policy. As these documents were marked classified pursuant to the Executive Order governing the classification of documents and are presently located in the requested file, I determined that those documents should be withheld pursuant to (b) (1).


LILBURN E. BOGGS

Sworn and subscribed before me this 15th day of September, 1977.

NOTARY PUBLIC

My Commission Expires January 31, 1980

March 30th. 1977.

U.S. Secret Service,
1000 "G" St N.W.,
Washington, D.C. 20523.

Dear Sir,

Attention Mr. Robert O'Goff, Staff Assistant.

Herby, I am requesting under the Freedom of Information Act
5 U.S.C., paragraph 552, copy of all the files indexed or
named under my name Usher Weinrauch of the above address, New
York, Johnson City, N.Y., Washington, D.C., Chicago, Ill., etc.

With thanks,

Yours very truly,



Usher Weinrauch, Dipl. Eng., C.E. (Rum.) C.E. (Israel), M.A.T., J.D., M.A., M.S.E.,

cc/ to members of Congress, subcommittee of Civil Rights
and Rights, Federal Attorney for New York City, etc.

RECEIVED

MAR 31 1977

U.S. SECRET SERVICE

ATTACHMENT 1

U.S. SECRET SERVICE
800.6
CO-2-73,194

1728

April 6, 1977

Mr. Usher Weinrauch
Suite 6J
701 Empire Bld.
Brooklyn, New York 11213

Dear Mr. Weinrauch:

Reference is made to your letter received on April 1, 1977, pursuant to the Freedom of Information Act, Title 5, United States Code, Section 552.

Pursuant to Title 5, United States Code, Section 552(b)(7)(A), your file is being exempted since disclosure would interfere with an ongoing proceeding. The citation of the above exemption is not to be construed as the only exemption which may be applied under the Freedom of Information Act.

If you disagree with our determination you have the right of administrative appeal within 35 days by writing to Freedom of Information Appeal, Deputy Director, U.S. Secret Service, 1800 G Street, N.W., Room 944, Washington, D.C. 20223.

Sincerely,

Robert O. Goff
Freedom of Information &
Privacy Acts Officer
Office of Public Affairs

Official Files
Subject File
Chron
Public Affairs

ROG:BJ 4/6/77

ATTACHMENT 2

Suite 6J, Empire Bldg Brooklyn, NY 11213.
Telephone: 412/405.7360.

May 3th. 1977.

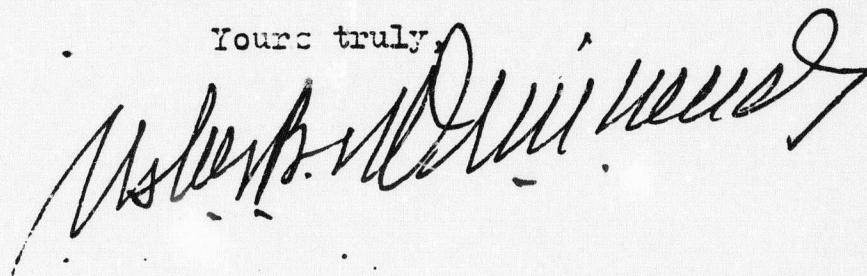
Freedom of Information Appeal,
Deputy Director,
U.S. Secret Service,
1800 "G" Street, N.W., Room 944,
Washington, D.C. 20223.

Dear Sir,

In answer to your letter dated April 6, 1977, received on
11, 1977, I am advised to write the following:

I hereby appeal your refusal to comply with my Freedom of
Information Act request.

Yours truly,

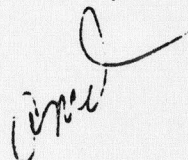


Usher B. Weinrauch, Dipl. Ing., C.E. (Rum.), C.E. (Israel), M.I.C.E., A.S.T.,

cc/To Members of the Congress of the United States,
To Subcommittee of Civil and Constitutional Rights
To The Civil Liberties Union,
etc.

RECEIVED
MAY 12 1977
FBI

APR 12 1977
FBI



ATTACHMENT 3

**COPY FOR THE
RECORD**

800.6

Mr. Usher Weinrauch
Suite 6J
701 Empire Boulevard
Brooklyn, New York 11213

Dear Mr. Weinrauch:

Reference is made to your letter received May 12, 1977 appealing a decision of Mr. Robert O. Coff, Freedom of Information Officer, United States Secret Service, denying you certain information under the Freedom of Information Act. Treasury regulations regarding administrative appeals of initial denials by the United States Secret Service vest the review authority in the Deputy Director of the Secret Service (31 Code of Federal Regulations, Subtitle A, Part 1, Appendix B and 40 Federal Register 49089, dated October 21, 1975).

The records and correspondence pertinent to your appeal have been reviewed. I have determined that the exemption claimed by Mr. Coff in his letter of April 6, 1977 was proper. The Secret Service records contain investigatory information compiled for law enforcement purposes. Pursuant to Title 5, United States Code, Section 552, Subsection (b)(7)(A), they are being withheld since disclosure would interfere with an ongoing enforcement proceeding constitute an unwarranted invasion of personal privacy. In addition, subsections (b)(7)(C), (D), (E), and (F), are applicable in that disclosure would constitute an unwarranted invasion of personal privacy, would disclose the identity of a confidential source and/or information furnished by a confidential source, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel, or a combination of the above.

Pursuant to Subsection (b)(5), certain Secret Service records are being withheld since they contain inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Secret Service. Other information was withheld in accordance with subsection (b)(2) as matters relating solely to internal proceedings. Pursuant to subsection (b)(1) certain material was withheld as information that is currently

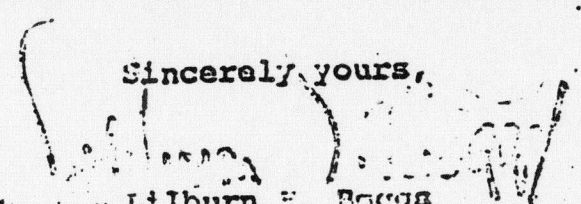
ATTACHMENT 4

and properly classified in the interest of national defense and foreign policy. The citation of these exemptions is not to be construed as including the only exemptions which may be applicable to these documents under the Freedom of Information Act.

Any denial on appeal is subject to judicial review in the District Court in the district where the complainant resides, has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

For the purpose of appeals of initial denials under the Freedom of Information Act, the undersigned is the official making this determination for the United States Secret Service.

Sincerely yours,


Lilburn F. Boggs
Deputy Director

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
USHER B. WEINRAUCH,

Plaintiff,

-against-

U.S. SECRET SERVICE, LILBURN E.
BOGGS, et al.,

Defendants.
-----x

U.S. DISTRICT COURT - E.D.N.Y.

MAR 20 1978

TIME

77-C-1458

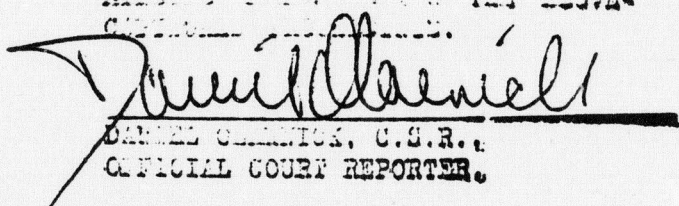
United States Courthouse
Brooklyn, New York

October 21, 1977
9:30 o'clock A.M.

B e f o r e :

HONORABLE JACK B. WEINSTEIN, U.S.D.J.

I HEREBY CERTIFY THAT THE FOREGOING
IS AN ACCURATE TRANSCRIPT OF THE
HEARING HELD ON THE ABOVE-
CAPTIONED MATTER.


DANIEL OLARNICK, C.S.R.,
OFFICIAL COURT REPORTER.

DANIEL OLARNICK
ACTING OFFICIAL COURT REPORTER

EASTERN DISTRICT COURT REPORTERS
UNITED STATES DISTRICT COURT
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201
852-7103

20

Appearances:

USHER B. WEINRAUCH
PRO SE

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: RALPH MCMURRAY, ESQ.
Assistant U.S. Attorney

1 THE COURT: All right, I will hear you briefly,
2 on your motion.

3 MR. MC MURRAY: Your Honor, this is the
4 Government's motion for summary judgment and the freedom
5 of information in that case. The agency that the
6 plaintiff is seeking the records from is the Secret
7 Service.

8 Briefly, I don't want to -- all I have to say
9 is in my memorandum, Judge, but the essence of the
10 Government's position is that there's an active investi-
11 gation into the plaintiff's case and that the agency
12 maintains that Exception 7A covers the whole file.

13 THE COURT: Do you have a file on him?

14 MR. MC MURRAY: Yes, I do.

15 THE COURT: Produce it and I'll examine it in
16 camera.

17 MR. MC MURRAY: All right. I have it right here.

18 THE COURT: All right. The clerk will mark that
19 file.

20 THE CLERK: Court's Exhibit 1.

21 THE COURT: Return at 2:00 o'clock, after I have
22 examined it.

23 MR. WEINRAUCH: May I make a submission?

24 THE COURT: What is your submission?

25 MR. WEINRAUCH: Your Honor's order, on the first

1 order is clear, that the defendant has to file an
2 affidavit showing cause why the Government does not
3 turn over, within 60 days. The defendant failed to
4 file within 60 days, as it shown in the plaintiff's
5 evidence submitted in this Court four days ago.

6 Your Honor, the defendant tried to delay, to
7 harass the plaintiff.

8 Now, I make here a statement, being very aware
9 of our Honor and the defendant have possibilities (sic)
10 to prove if I am wrong or not.

11 Now I state here, your Honor, that the plaintiff
12 is involved in no political activities.

13 The plaintiff is member of no club or political
14 association or religious association, for that matter.

15 I am, notwithstanding that I am, a religious
16 Jew.

17 Now, the plaintiff is engaged in no unlawful
18 acts and never was engaged in.

19 The plaintiff is a highly qualified professional
20 engineer and the defendants are tools, instruments of
21 the Australian Intelligence Security Organization,
22 AISA, which they sent in January and December, '75,
23 the director of this organization to New York to handle
24 me, to handle the plaintiff.

25 Now, the plaintiff for two years, your Honor,

1 has tried to earn a living. They are following him in
2 his place of work. Why? The plaintiff tried to hide?
3 in a number of states. They followed me in Chicago,
4 Illinois. What activities did I have that they should
5 show what I did in Chicago, Illinois. What did I do
6 in Binghamton? Senator Javits' office in Washington
7 and the United States -- isn't that it -- now, I have
8 a lawyer who endeavored to help me.

9 Now, I would call your Honor's attention to the
10 history of this: For ten years, your Honor, I am
11 hounded all over the world, because I have refused --
12 and I have here evidence -- because I refused in
13 Australia to put my business endeavors and my profes-
14 sional skill under a Gentile's name. I refused because
15 I am a Roumanian native. During the period in Roumania
16 that Jews had to put the business endeavors in Gentile's
17 names. My father had to put his business in a Gentile
18 name. They requested me, because I am a Jew to put
19 my business in a Gentile's name. Because I refused,
20 they defraud me of my business, properties.

21 I have here evidence, legal rights, and they
22 hounded me all over the world, your Honor.

23 Your Honor, they followed me in Chicago -- in
24 Toronto. I left there in '73. They followed me in
25 Toronto. They charged me with five criminal charges.

1 False. I give your Honor the name of the lawyers to
2 check. When they saw that they tried to blackmail me,
3 to plead guilty (sic). The day when I had to plead
4 in Court, my lawyer, Harry Torpedo (ph) from Toronto
5 came out in the front of the Court of the so-called
6 Judge and told me, "Mr. Weinrauch, if you plead guilty,
7 I get you out with \$50 fine. If you don't plead
8 guilty they will take you to Australia." I don't
9 think they will do it in the Court or in the evening. (sic)
10 I have to exist. I have here documents which justify
11 that. I refuse. I went in and pleaded not guilty.
12 I want to come to a point. It's a very important
13 point. I would not take your time if it would not be
14 important.

15 THE COURT: I will give you your time, but I
16 have to read the papers first.

17 MR. WEINRAUCH: I would ask your Honor to read
18 these papers too then.

19 THE COURT: I'll be happy to read these papers.
20 Mark them as a single exhibit.

21 MR. WEINRAUCH: That is an Australian case,
22 your Honor. I am prepared to swear that was a true
23 photostatic copy. It says, "Did you make an apology
24 for being a Jew?" That's where they robbed me of my
25 properties.

1 The second page, it was where I constructed a
2 grandstand, they called me, "A bloody Jew." There is
3 evidence of Jew-hating activities in Australia.

4 THE COURT: Are there any other activities --

5 MR. MC MURRAY: Yes, your Honor --

6 MR. WEINRAUCH: Here is what happened, when I
7 was kidnapped by the Australian police --

8 THE COURT: This is Court's Exhibit 3.

9 THE CLERK: Court's Exhibit 3.

10 MR. WEINRAUCH: Your Honor, the plaintiff, the
11 defendants -- are going around with lives --

12 THE COURT: Excuse me. I just want to have
13 your documents so I can read them.

14 MR. WEINRAUCH: Yes. If your Honor will bear
15 with me.

16 Your Honor, that is a letter from the prison,
17 that is my answer to help me get rid of the pestilence,
18 I call the United States Secret Service.

19 THE COURT: Mark it as an exhibit.

20 THE CLERK: Court's Exhibit 4.

21 MR. WEINRAUCH: Four and five.

22 THE COURT: They will be one exhibit.

23 MR. WEINRAUCH: No, your Honor. After you read
24 the documents, the Australians --

25 THE COURT: I don't want to argue.

1 MR. WEINRAUCH: I want to submit something.

2 Here is a presentation --

3 THE COURT: Mark it as Exhibit 5.

4 THE CLERK: Court's Exhibit 5.

5 MR. WEINRAUCH: I would show that the Australians,
6 in their answers, the Australian Ambassadors doesn't
7 deny my allegations, but says his Government has no
8 responsibility --

9 THE COURT: I will read all the papers.

10 MR. WEINRAUCH: There may be others, your Honor,
11 which I would ask your Honor to allow me to -- that is
12 five?

13 THE CLERK: Five.

14 THE COURT: All right. I will see you both at
15 2:00 o'clock.

16 MR. MC MURRAY: Thank you, your Honor.

17 MR. WEINRAUCH: Thank you, your Honor. That is
18 an affair where the United States Secret Service has
19 used to destroy an individual.

20 Your Honor, they should bring evidence, not words.

21 I am involved in no political activity. I'm a
22 member of no organization, no club. What do they want
23 from me? I have no record.

24 THE COURT: I will hear you at 2:00 o'clock.

25 Thank you, gentlemen.

1 Next case, please.

2 (Whereupon, a recess was taken.)

3 (After recess.)

4 THE COURT: I have read the papers submitted
5 by the Government. They are contained in Court's
6 Exhibit 1, which I sealed, and I have ordered the Clerk
7 to keep sealed until further order of the Court,
8 should there be an appeal.

9 This file is exempt from disclosure, because it
10 contains investigatory records compiled for law enforce-
11 ment purposes. The production of the report would
12 interfere with possible law enforcement proceedings in
13 the future.

14 Revealing the record would also possibly dis-
15 close investigative techniques and procedures; the
16 production would also disclose the identity of possible
17 confidential sources, and of confidential information.

18 These records should be kept sealed because
19 they may affect the foreign policy and foreign relations
20 of the country. They were properly compiled by the
21 Secret Service, in its obligation to protect repre-
22 sentatives of foreign countries present in this
23 country and visiting officials from foreign countries
24 in the past and possibly in the future.

25 I have also read the material supplied by the

1 plaintiff and I will be happy to hear the plaintiff
2 further, if he wishes to be heard. Do you wish to be
3 heard?

4 MR. WEINRAUCH: Yes, sir.

5 THE COURT: Swear the witness, please.

6 U S H E R B. W E I N R A U C H , called as a
7 witness in his own behalf, having been first duly
8 sworn, was examined and testified as follows:

9 THE WITNESS: That is testimony or as to
10 admissions?

11 THE COURT: Testimony. I want testimony. I
12 will take whatever you want to say in supplementation
13 of the record.

14 THE WITNESS: I want to make some admissions.

15 THE COURT: Yes, argument, I will hear argument
16 as well as any additional information.

17 THE WITNESS: Well, I can't give testimony (sic).

18 THE COURT: Now, was all the information you
19 gave this morning truthful?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: All right, you may continue.

22 If you want to give testimony, take the witness
23 stand, and if you want to argue anything from the
24 record already in evidence, since you are appearing
25 pro se, then you may argue from the position you are

1 in now.

2 THE WITNESS: I want to say, your Honor --

3 THE COURT: You are not going to take the
4 witness stand?

5 THE WITNESS: I can take it.

6 THE COURT: Whatever you wish. If you want to
7 give me additional information, take the witness
8 stand; if you want to argue, stand where you are.

9 THE CLERK: You have been sworn.

10 THE WITNESS: Shall I sit?

11 THE CLERK: Please be seated.

12 THE WITNESS: Your Honor, the photostat copies
13 of the transcript, page 076 (sic) and 262 are correct
14 and truthful copies of the transcript of a hearing.
15 The only additions are underlined by me or someone
16 else.

17 Now, it is obvious from that transcript that a
18 man could not have justice when he is asked, asked in
19 a so-called Court of Law that, "Do you make an apology
20 of being a Jew?" There is no process in Court to that
21 question, whether it was proper.

22 This Court may infer it was an unusual thing
23 to be done with Jews in a Court of Law.

24 It is a true transcript.

25 My barrister, the legal representative didn't

1 protest.

2 Page 262, again, a true photostat copy of the
3 transcript is evidence where they called me a "Bloody
4 Jew" and this page shows the atmosphere which deals in
5 Australia against Jews in business who refuse to put
6 their business under a Gentile's name.

7 Your Honor, under oath, I swear that I had a
8 confidential file in Australia which was transmitted
9 from judge to judge, wherever my name appeared, that
10 I have a hearing (sic).

11 Your Honor, you have a declaration sworn there,
12 which I sent to the Australian Embassy. They requested
13 it. There is a letter from the Roumanian Jewish
14 Federation Incorporated dated February 8, '76 where
15 Dr. Charles H. Kramer (ph) a thirty second degree Mason
16 states the facts which I told to the representative of
17 the Australian Government and of the Australian Jewish
18 Organization.

19 Now, that man is overseas. He would have been
20 here to testify to the truthfulness of this letter and
21 he signed and those are the facts.

22 Here is a brief, your Honor, containing five
23 pages dated June 18th '74, which was sent to the High
24 Commissioner of Australia and Canada. That is the
25 receipt. It was confirmed by Peacher Bailey (ph), a

1 secretary in the Prime Minister's department that
2 they received this.

3 The facts related in this brief, your Honor,
4 are true.

5 Moreover, this brief was read before I sent it,
6 and things which didn't -- were corrected in order to
7 be true and less than the total facts (sic). And I
8 swear that the facts are true. They are not all the
9 facts. They have not told the facts.

10 Your Honor, here is a letter addressed, dated
11 November 1st, '73, addressed to Mr. Wittman (ph), the
12 prime minister at the time of Australia.

13 Again, under oath, the facts are true.

14 There's some legal evidences.

15 Now, further is attached there from the Roumanian
16 Jewish Federation of America a letter addressed to
17 Her Majesty, the Queen. This letter was dated
18 February 6, '77. A second letter dated May 7th, 1977.

19 Now, your Honor, a part of the letter, sent to
20 the Prime Minister of the United Kingdom on May 30, '77,
21 where he sent letters to other members of the British
22 Establishment, to a number of members of Parliament in
23 London and to Lord Fisher (ph), the president of the
24 Jewish Board of Deputies. And in this letter dated
25 May 2nd, addressed to the Prime Minister of the United

1 Kingdom, Mr. Callahan (ph) -- and I have the copies
2 of the other letters to the other gentleman. I can
3 give the names. I have a copy there. They are similar
4 letters. We refer to the Chief Rabbi of the British
5 Commonwealth.

6 Now, he will not say lies, this man, he's a
7 Rabbi. On the strength of these two letters, and the
8 material which was sent to London; the Queen, Her
9 Majesty, the Queen, saw fit to nominate, in Australia,
10 a Governor-General in order to have a check of the
11 Jew-hating practices which are going on in Australia.

12 May I take from mine file to give the names of
13 the people?

14 THE COURT: Yes.

15 THE WITNESS: We sent letters, the same date,
16 May 30, '77, with the same contact, to the letter (sic)
17 to the Honorable Prime Minister, Mr. James Callaghan (ph)
18 to Lord Fisher (ph) the president of the Board of
19 Deputies of the British Jews; the Honorable Granville
20 Jenner (ph), a member of Parliament; to the Honorable
21 Eric Rochman (ph), the Chairman of the Zionist Federa-
22 tion of the United Kingdom and a member of Parliament;
23 to the Honorable James Callahan (ph) which I said, and
24 to the Honorable Harold Levy (ph), member of the
25 Parliament in the House of Commons, a leading member of

1 Parliament in the United Kingdom.

2 We sent facts, your Honor, and we sent our
3 evidence. It was attached to this letter, your Honor,
4 a letter dated December 19th, 1976, addressed to His
5 Excellency, James Hargrove, Esquire (ph), United States
6 Ambassador in Australia, and we wrote in this letter
7 the Roumanian Jewish Federation of America, the
8 president signed this letter in support of our conten-
9 tion that the Australian Governments are using, through
10 so-called Courts of Law, as a system for the systematic
11 robbery of Jewish property, business and legal rights.
12 I would suggest you inquire the name of any director
13 of L.J. Hooker Corporation, Limited, who is of Jewish
14 religion. This corporation was created. Mr. Hooker,
15 together with a group of Jewish businessmen, and
16 through a number of Court cases, with false allegations,
17 these corporations was robbed of their rights and
18 taken over by a gang of Jew haters.

19 Today there is no Jew working in the management
20 of this L.J. Hooker Limited. The same methods were
21 used, I guess, by many other Jewish businessmen. One
22 of them being Mr. Asher Weinhurst (ph) and all the
23 degrees were given in the leading societies, who are
24 a Roumanian and a permanent resident in the United
25 States of America (sic). We do trust that you know

1 the intimate relationship between Mr. Dennis Killen (ph)
2 and the Australian Nazi Party.

3 Mr. Killen (ph) is the defense minister in
4 Australia.

5 This letter was sent to the people in the United
6 Kingdom in London, who had intimate relations with the
7 people in Australia, the Chief Rabbi of the Common-
8 wealth, who is under his supervision, the Australian
9 Jewish life. This letter was mentioned. It wouldn't
10 have been true, because he didn't mention it, because
11 it's easy to be checked.

12 I am a professional man. I mentioned the name
13 of the Chief Rabbi of Roumania, Dr. Mahn Rosen (ph)
14 who knows me from my childhood, who knows my family.
15 I wouldn't risk my name if it wouldn't have been true,
16 my relations, and the fact that it is true -- after a
17 couple of months, Her Majesty, the Queen, appointed a
18 Governor General, a Jew, in order to check the criminals
19 they appointed there as judges. I say criminals to
20 what they do with Jews there.

21 THE COURT: Well, you'll have to bring your
22 testimony to a close shortly. I don't want to cut
23 you off --

24 THE WITNESS: Your Honor, I have --

25 THE COURT: I have the documents before me --

1 THE WITNESS: (continuing) You have a letter to
2 His Excellency, Mr. James Carter, the President of the
3 United States. There is a copy of a letter which --
4 I don't want to take your time, your Honor --

5 THE COURT: No, I'm happy to hear you. I just
6 had to give instructions to my law clerk.

7 THE WITNESS: So we wrote to His Excellency, the
8 President of the United States, your Honor, complaining
9 about the United States Secret Service activities.
10 Now we go to the Canadian part of it. After what
11 happened to me in Australia I went to Canada, and that
12 is attached to my memorandum. They say, when they
13 kidnapped me, charging me with five criminal offenses,
14 which I didn't do -- the policeman who kidnapped me
15 says, "I only know one man who say the truth, and for
16 that he was killed. He was Jesus Christ." Now, every-
17 body knows I say the truth, otherwise he wouldn't say
18 it. This is a copy which I read from the 7th of
19 August, '74. I didn't know I would have to come before
20 your Honor.

21 Then you have further, your Honor, on the cite
22 of Exhibit Two that Mr. Incam (ph) the High Commissioner
23 in Australia who received my brief, the High Commissioner
24 of Australia, says, "I will arrest you if you will
25 demonstrate --" If I will demonstrate in front of his

1 residence and office -- that I was already arrested
2 once -- if you come to Australia, I will arrange for
3 you to be arrested.

4 So, your Honor, what I said, in fact, and that
5 is the key, that if I dare to demonstrate, they arrest
6 me.

7 I ask your Honor to answer if demonstration,
8 peaceful demonstration is an unlawful act? And what
9 the United States Secret Service is seeking is to stop
10 me from demonstrating, not that I am dangerous, your
11 Honor, I am not.

12 Your Honor, there's an Exhibit 3 and 4 on this
13 memorandum, copies of newspapers. This article, to
14 my understanding, was written by Ted Baldwin (ph).
15 He was an aperitif (sic) of the Australian Government,
16 brought in to Toronto for me, and he was dealing with
17 the news media. It was the same Ted Baldwin (ph) who
18 was the editor-in-chief of the New York Post when
19 Mr. Murdock (ph) took over the New York Post. The
20 same Mr. Murdock (ph) -- Mr. Baldwin. Now, your
21 Honor, they couldn't take the New York Post to pay
22 \$71,000,000, a private man (sic). I am strongly
23 convinced that was financed by the Australian
24 Intelligence activities. You have here a news
25 release dated November, '74, where I repeat what I

1 related to your Honor, before the hearing, I was
2 blackmailed by my own lawyer to plead guilty for
3 something I didn't do, because it was more convenient.

4 Now, your Honor, I give your Honor the telephone
5 number and your Honor can check these allegations. I
6 don't ask you to believe me, everything, please check
7 by your own means. A telephone in Canada is nothing,
8 two dollars, you can check with a lawyer who has
9 nothing to lie and other lawyers. There is letters to
10 the Minister of Immigration, after I was kidnapped in
11 Canada, without due process, your Honor, and they
12 tired to take me to Australia by force. I didn't
13 breach any law in Australia, your Honor. I didn't go
14 out in Australia. I went penniless. I drove my car
15 to the airport, an old car, because they took every-
16 thing away from me. I left the car in the airport and
17 took a ticket and left. If I was going to my property
18 that I was developing, they had the police chasing me
19 and booking me for changing lanes without giving the
20 flicker. Now, how can I prove to a Magistrate that I
21 put the flicker on. My word against the Judge. It
22 was my word against the policeman's word. Who believes
23 the Magistrate? Every week I get two tickets. I
24 didn't make money and I have to pay tickets. In order
25 to stop me to go to my property, they used the police,

1 the local police to keep an eye on me.

2 Your Honor, in Canada I had fines in the
3 computer of the Toronto Police, the Montreal Police.
4 From wherever I go, I had the Montreal Police. On the
5 first of January, your Honor, I don't -- I don't go to
6 the first of January. The morning I took my car to see
7 somebody, a relation of mine, he has a business, a
8 cousin of my father. So I was involved in an accident.
9 The car turned and cut my fender of the car. So I
10 passed a policeman and he took the license number, the
11 driving leense, and he telephoned to his wireless
12 radio. The police had caught me and to my astonish-
13 ment, several minutes, five or ten minutes, I could
14 not say, they said things about me.

15 Now, I was involved in no unlawful act. Why
16 do they have a report from the Metropolitan Mounted
17 Police. He said, "You are all right." I said, "What
18 did they say there?" He said, "Nothing." He wouldn't
19 say what they said. Now, your Honor, so you have a
20 letter, Exhibit 9, where these charges were discon-
21 tinued.

22 Now, I had these five criminal charges against
23 me for -- from August until February. Every four weeks
24 I had to appear in Court to act as a criminal, standing
25 up. In my personal recognizance. I had to report to

1 the police. When I went to Montreal, I had to telephone
2 the police every week. They hold me by the neck. No
3 writing. So I went to the Minister of Justice in
4 Toronto one morning, when I had a hearing, and he make
5 a noise there, I screamed. I said, "If I did something
6 wrong, condemn me. If you don't have evidence, let me
7 alone." So, eventually, the Justice Department in
8 Toronto went to the Judge and they made a field day.

9 Now, I appeared before your Honor twice and I
10 assume that your Honor knows that I am not afraid to
11 open my mouth and say the truth under any consequences.
12 They wanted to stop me, to appear on February at the
13 Court hearing, not open my mouth, to say what happened
14 there. So they came on the 6th of January and they
15 kidnapped me, trying to take me to Australia.

16 THE COURT: What is it you want this Court to
17 do?

18 THE WITNESS: What I want to prove is that the
19 people in Canada worked with the Australian Intelligence
20 to harass me, to give up my claims.

21 THE COURT: What do you want me to do now?

22 THE WITNESS: I want all the files, every
23 document.

24 THE COURT: I can't give them to you. I have
25 read the files of the Secret Service --

1 THE WITNESS: Your Honor, I will make submissions --

2 THE COURT: (continuing) Excuse me.

3 Under the law, you are not entitled to see the
4 files. They are investigative files being used by the
5 Secret Service, carrying out their duties.

6 THE WITNESS: Well, your Honor, I will come to
7 that. They don't carry out their duties. I have
8 evidence they don't carry out their duties.

9 THE COURT: I am ruling that those files are
10 properly kept by the Secret Service in accordance with
11 the duties, under the Constitution and the Statutes of
12 the United States - -

13 THE WITNESS: Well, your Honor, with due respect,
14 you don't have any evidence that this is all the
15 documents the Secret Service has on me.

16 THE COURT: That is so.

17 THE WITNESS: I ask --

18 THE COURT: I will inquire.

19 Are these all the documents in the file?

20 MR. MC MURRAY: I understand, these are all the
21 documents. This is what I was told. It's not a
22 certified copy, if you want a certified copy --

23 THE COURT: If you made inquiry, that is
24 sufficient. I do not believe a United States Attorney
25 would lie to me.

1 THE WITNESS: Your Honor, we go further, after
2 they did what they did with me in Canada, I came to
3 the United States and there is other evidence from
4 Mr. Atlas (ph) an attorney, I received this. And you
5 have the copy there, and you may speak with Mr. Atlas.
6 I asked his permission to say this in Court today. I
7 asked his permission and he said, "By all means."
8 Your Honor can speak with him. And that proves, beyond
9 a doubt, that the Canadians are only dragging their
10 feet --

11 THE COURT: I want you to understand: what do
12 you want me to do about the Australians and the
13 Canadians?

14 THE WITNESS: I was told by one agent, the
15 Secret Service, they have something from Canada --

16 THE COURT: I can't reveal the files to you.

17 THE WITNESS: Well, your Honor, may I go to
18 make summations?

19 THE COURT: Certainly, but I'm going to have to
20 limit you, because we do have other business. I
21 understand this is important.

22 MR. WEINRAUCH: Well, your Honor, there is no
23 evidence in this file submitted, in 44 pages of waste
24 paper, that is waste paper --

25 THE COURT: Which file are you referring to?

1 MR. WEINRAUCH: This document I received from
2 the defendants. It is waste paper. It is generalities.
3 There is not one bit of material of evidence. I
4 challenge them to tell me what law I missed --

5 THE COURT: Nobody has accused you, in the
6 United States --

7 MR. WEINRAUCH: Then, why do they follow me
8 every place I am working?

9 THE COURT: The Secret Service?

10 MR. WEINRAUCH: I have here, your Honor, I am
11 before a Court of Law, I subpoena here eight people to
12 cross-examine them, to prove my point, that I am
13 innocent. Where are the people I subpoenaed?

14 THE COURT: You haven't been charged with any-
15 thing.

16 MR. WEINRAUCH: Pardon?

17 THE COURT: You have not been charged with
18 anything.

19 MR. WEINRAUCH: Well, your Honor, what I submit
20 to you is that the Australian Secret Police, together
21 with the Royal Canadian Mounted Police are in collusion
22 with the United States Secret Police to harass me.
23 Your Honor, they went to the FBI to do the same thing.

24 THE COURT: There is no evidence of harassment
25 in the file.

1 MR. WEINRAUCH: They don't have evidence. I
2 suggest to your Honor that is not the file. Let them
3 come here and swear that they have no other documents
4 in the file.

5 THE COURT: No, I am not going to require that.
6 I don't think it's necessary.

7 MR. WEINRAUCH: Pardon?

8 THE COURT: I do not think it is necessary. I
9 have the statement of the United States Attorney.

10 MR. WEINRAUCH: Well, the statement of the
11 United States Attorney, in writing, states that on
12 page 9 and I take it I will have to go in order --
13 page 19 -- United States Attorney, Ralph McMurray
14 restates, in the affidavit, paragraph 8, asserted
15 plaintiff had intimidated and harassed individuals.
16 What individual have I harassed or intimidated? Now,
17 to harass a man in the law is an unlawful act. What
18 individual? It states here that I have harassed and
19 intimidated individuals. So, show me, with evidence
20 whom I have harassed and intimidated.

21 THE COURT: It is irrelevant. It makes no
22 difference.

23 MR. WEINRAUCH: What does it mean? It makes
24 no difference? Can the United States Secret Service,
25 any agency put themselves on a man and destroy him?

1 Whom did I harass? Whom did I intimidate? That is a
2 matter of evidence. They cannot say, "We pick up this
3 man and we say that he is dangerous --"

4 THE COURT: When have you been picked up by the
5 United States Secret Service?

6 MR. WEINRAUCH: All the time, for twelve and a
7 half years, they pick up on me. They entered my
8 apartment building with master keys --

9 THE COURT: If they come into your apartment,
10 you can sue them for trespassing. If they take you
11 into physical custody without warrant, you can bring a
12 writ of habeas corpus, but there is no evidence they
13 have taken you into custody.

14 MR. WEINRAUCH: Sir, they say that I, the
15 plaintiff, they say that the plaintiff has intimidated
16 and harassed individuals under the lawful protection
17 of this service; that the plaintiff has harassed and
18 intimidated, under the lawful protection of this
19 service -- if I did that, I deserve to be followed;
20 if I didn't do it, they should not follow me. I
21 should get to the bottom of the file, to see what they
22 are doing.

23 Now, we don't live in a vacuum, your Honor. They
24 state, in expressed terms, and I want evidence. I'm
25 entitled to evidence to prove it. Your Honor can make

1 I submit, a decision, based on facts, not based on
2 nebulous allegations.

3 They said that I harassed, I intimidated. Whom
4 I did harass or intimidate?

5 THE COURT: It makes no difference whether you
6 harassed or didn't harass. Nobody is accusing you --

7 MR. WEINRAUCH: Well, your Honor, I subpoenaed
8 them here to justify. I subpoenaed them all. There
9 are complaints with the United States Attorney in
10 Manhattan here regarding the unlawful act.

11 I was defrauded of my car, your Honor, by the
12 United States Secret Service.

13 THE COURT: Well, if there is such a situation
14 you can sue the Government under the Federal Tort
15 Claims Act for damages.

16 MR. WEINRAUCH: Well, your Honor, how can I sue
17 when everything is secret?

18 THE COURT: There is nothing in the file with
19 respect to an automobile.

20 MR. WEINRAUCH: Well, your Honor, I submit that
21 your Honor should not give a decision until you have
22 the facts in your possession. What should you do if
23 my submission is correct, that the Australian Secret
24 Police were protecting their activities in Australia
25 and the Royal Canadian Mounted Police were there to

1 protect the materials they gave me in Canada, they
2 sent to the United States Secret Service false informa-
3 tion. Where do I go to have an address. I repeat,
4 what is the situation? I assume if your Honor doesn't
5 have evidence, your Honor has only information from
6 the Australian Secret Police and Canada, because they
7 told me they have information from this country, from
8 the United States Secret Service.

9 THE COURT: They haven't taken any action against
10 you. Should they bring an action against you, accuse
11 you of a crime, you will be defended.

12 MR. WEINRAUCH: Your Honor, they are following
13 me everywhere I go to work and stopping me from making
14 a living.

15 THE COURT: There is no evidence --

16 MR. WEINRAUCH: Pardon?

17 THE COURT: There is no evidence in the file.

18 MR. WEINRAUCH: Well, your Honor, I subpoenaed
19 evidence from Mr. Trager's office. Where is the
20 correspondence from Mr. Trager which I subpoenaed
21 today?

22 THE COURT: What is the correspondence? Do you
23 have a file?

24 MR. MC MURRAY: I received a subpoena. He
25 subpoenaed Mr. Trager, subpoenaed myself, subpoenaed

1 other individuals --

2 THE COURT: Do you know all the facts here?

3 MR. MC MURRAY: I gave the entire file to your
4 Honor.

5 MR. WEINRAUCH: Did you give the file from
6 Mr. Trager, which Mr. Trager received from the
7 plaintiff? Did you give the file that Mr. Frisk (ph)
8 received from the members of Congress --

9 THE COURT: I have the file of the Secret
10 Service --

11 MR. WEINRAUCH: Well, your Honor, the file of
12 the Secret Service I submit, is not complete until I
13 can examine it.

14 THE COURT: I am not going to permit that.

15 MR. WEINRAUCH: Your Honor, where should a
16 plaintiff go when he is harassed?

17 THE COURT: If you're harassed, you can bring
18 action under the Federal Tort Claims Act --

19 MR. WEINRAUCH: They have the file --

20 THE COURT: I looked through the file. There
21 is nothing to support your allegations in the file
22 and, therefore, you are not entitled to see it.
23 They're entitled to keep it secret, because they're
24 an investigatory agency.

25 MR. WEINRAUCH: What do they investigate, your

1 Honor?

2 THE COURT: I am not going to get involved in
3 revealing what is in the file.

4 MR. WEINRAUCH: If they investigate something,
5 if they investigate something, they must have a good
6 reason to investigate.

7 THE COURT: Not necessarily, no.

8 I am not going to control their investigation
9 and tell them how to spend their time.

10 MR. WEINRAUCH: I am looking for a business
11 card here of the United States Secret Service (sic).

12 THE COURT: I am afraid I am going to have to
13 cut you off.

14 MR. WEINRAUCH: Well, your Honor, I am completely
15 unhappy. I did not break any law. I did not intimidate
16 or harass anybody. A gang of Jew haters from the
17 United States Secret Service has no business to keep
18 them busy with me. There are certain things which I
19 ask your Honor about.

20 Now, if they can bring in evidence that I
21 breached the law, that I harassed someone -- you have
22 the letter, your Honor, to Congressman Koch. You have
23 the letter to Congressman Koch --

24 THE COURT: Yes, I have read it. I read all
25 the files --

1 MR. WEINRAUCH: In the letter to Congressman
2 Koch, they stated the case is closed, so they say the
3 file is closed, don't they? Don't they say in the
4 letter to Congressman Koch that the file is closed?
5 They say in the letter to Congressman Koch. He,
6 meaning the Secret Service agent, stated that you are
7 not under surveillance. He stated that you are not
8 under surveillance, that he told Congressman Koch that
9 I am not under surveillance. They say I am under
10 surveillance. So, in fact, he went to the Congressman
11 verbally, lying by ear, which is not accurate facts.
12 Now, all these letters --

13 THE COURT: I am going to have to stop you,
14 Mr. Weinrauch. Thank you very much.

15 Please sit down.

16 Do you have any cross-examination?

17 MR. WEINRAUCH: I didn't finish, your Honor --

18 THE COURT: Sir --

19 MR. WEINRAUCH: No --

20 THE COURT: Do you have any cross-examination?

21 MR. MC MURRAY: No, sir.

22 THE COURT: Do you have any witnesses?

23 MR MC MURRAY: No, sir.

24 THE COURT: All right, the hearing is completed.

25 No claim for relief has been shown.

1 The case is dismissed, without costs or dis-
2 bursements.

3 Now, the Government will enter an order, submit
4 it promptly, Tuesday.

5 If you want to see it before it is submitted,
6 you can come down and see it.

7 What time will it be ready?

8 MR. MC MURRAY: I will try to have it ready
9 late Tuesday afternoon, Judge.

10 THE COURT: All right, then, you can come down
11 by 4:00 o'clock and look at it and if you have any
12 comments on it you can submit them in writing that
13 same day, otherwise I will sign the order Wednesday.

14 If you want to take an appeal, then you can
15 take an appeal from that order to the Court of Appeals,
16 Second Circuit.

17 MR. WEINRAUCH: What do they have to prepare --

18 THE COURT: Just the order saying I have dis-
19 missed it after hearing the case, but I want you to
20 see it. Then you can take an appeal from that. That
21 will be a final judgment.

22 MR. WEINRAUCH: Can I ask your Honor to speak?
23 Before you sign the order, to leave the matter open to
24 speak to Mr. Atlas (ph), because Mr. Atlas (ph) spoke
25 with the United States Secret Service last year.

1 THE COURT: I don't want to speak to Mr. Atlas.

2 MR. WEINRAUCH: Well, your Honor doesn't want
3 evidence --

4 THE COURT: I think I heard enough evidence.

5 MR. WEINRAUCH: Mr. Atlas is an attorney who
6 acted for me without money, because I cannot pay --

7 THE COURT: It does not make a difference what
8 Mr. Atlas would say. I have to decide it on the file
9 I have observed. He can't see that file.

10 I have said that I have determined that, based
11 on the files. There is no cause of action, no claim
12 for relief. So, there is nothing he can do for it.

13 MR. WEINRAUCH: Your Honor, do you consider that
14 I would come and disturb your Honor and negate my
15 profession and religion and you wouldn't find a cause
16 of action? They followed me. They followed me in the
17 room where I took examination for licensing as pro-
18 fessional engineer in New York State. They followed
19 me in Chicago where they destroyed my business
20 connections. What should I do now, throw myself out
21 of the bridge, kill myself? How shall I get relief
22 from them? They are after me. They followed me, your
23 Honor. They even tried to make friends with me.

24 THE COURT: I can't help you any further. We
25 have a full record now, and if you wish, you can take

1 an appeal to the Court of Appeals. That is all I ³⁴
2 can do.

3 We have established everything, to my satisfac-
4 tion, and the Court of Appeals are three Judges who
5 will hear the appeal, who will be able to examine the
6 file and a complete transcript.

7 MR. WEINRAUCH: Can I not get justice in New
8 York City in Brooklyn?

9 THE COURT: I have done the best I can. If I
10 have made a mistake, the Court of Appeals will correct
11 me.

12 MR. WEINRAUCH: Your Honor, they're after me,
13 step by step. They came after me in my place of work
14 three weeks ago.

15 THE COURT: I am sorry --

16 MR. WEINRAUCH: You let them do what they want?

17 THE COURT: The hearing is terminated.

18 Thank you, very much.

19 Follow my instructions.

20
21 * * *

CH:RLMc:pbf
F# 772259

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLOSED

-----X
USHER B. WEINRAUCH,

Plaintiff,

- against -

UNITED STATES SECRET SERVICE,
LILBURN E. BOGGS, DEPUTY DIRECTOR,
UNITED STATES SECRET SERVICE, AND
HON. MICHAEL BLUMENTHAL, UNITED
STATES TREASURER,

Defendant.
-----X

ORDER

Civil Action
No. 77 C 1458

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ NOV - 2 1977 ★
TIME A.M. _____
P.M. _____

gm

The plaintiff having commenced this action under the Freedom of Information Act, 5 U.S.C. §552 et seq., to obtain all documents and records in the files of the United States Secret Service pertaining to plaintiff, and this cause having come on to be heard before the undersigned United States District Judge on October 21, 1977, upon the motion of the defendants for an order granting summary judgment, and DAVID G. TRAGER, United States Attorney for the Eastern District of New York, by Ralph L. McMurtry, Assistant United States Attorney, having appeared for the defendants in support of the motion, and Usher B. Weinrauch, plaintiff, having appeared pro se in opposition to the motion, and the aforesaid documents and records of the United States Secret Service having been marked and received as court's Exhibit "1", and the court having examined court's Exhibit "1" in camera, and the court having examined the exhibits submitted by plaintiff, said exhibits being duly marked and received, and a ~~trial~~ ^{hearing} having been had, and upon all the pleadings and papers herein, it is hereby

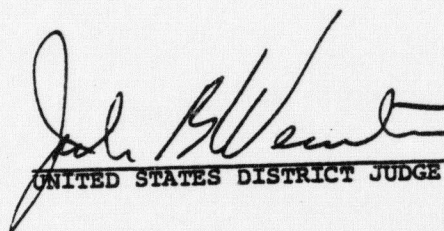
13

ORDERED, that the said motion of defendants be and the same is in all respects, granted, and it is further

ORDERED, that the complaint be dismissed without costs or disbursements, and it is further

ORDERED, that the Clerk of the Court is directed to seal and to keep sealed court's Exhibit "1" until further order of a court of competent jurisdiction should an appeal be taken.

Dated: Brooklyn, New York
October 1, 1977
November 1


UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

----- x
USHER B. WEINRAUCH,

Plaintiff-Appellant,

-against-

UNITED STATES SECRET SERVICE,
LILBURN E. BOGGS, Deputy Director,
United States Secret Service, and
HON. MICHAEL BLUMENTHAL,
United States Treasurer,

Defendants-Appellees.

:
:
: No. 77-6202

:
: AFFIDAVIT OF
: SERVICE BY MAIL

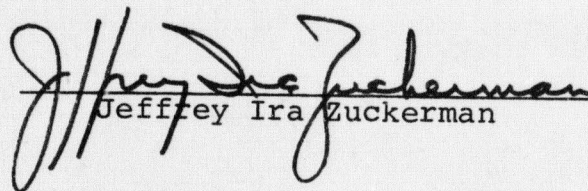
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STATE OF NEW YORK)

: ss.:

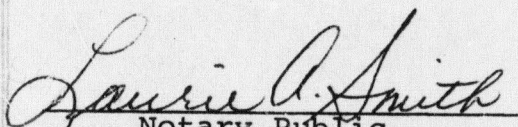
COUNTY OF NEW YORK)

JEFFREY IRA ZUCKERMAN, being duly sworn, deposes
and says that on June 22, 1978, he caused to be served upon
the United States Attorney for the Eastern District of New
York, counsel for appellees, two copies of APPELLANT'S
BRIEF AND APPENDIX, dated June 23, 1978, by mailing said
copies, postage prepaid, to

Ralph L. McMurry, Esq.,
Assistant United States Attorney,
225 Cadman Plaza East,
Brooklyn, New York 11201.


Jeffrey Ira Zuckerman

Sworn to before me this
22nd day of June, 1978.


Notary Public
LAURIE A. SMITH
NOTARY PUBLIC, State of New York
Residing in Richmond County
Richmond Co. Clk's No. 43-4616093
Certificate Filed in
New York Co. Clk's Office
Commission Expires March 30, 1979

